

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1535 – SB 2537

March 11, 2016

SUMMARY OF ORIGINAL BILL: Decreases, from \$250,000,000 to \$150,000,000, the minimum capital investment required to be made, and from 25 to 15, the minimum number of jobs required to be created over the investment period, for businesses to be considered a qualified data center for the purpose of being exempt from the sales and use tax on cooling equipment or backup power infrastructure when such equipment or infrastructure is sold to or used by a qualified data center.

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Revenue – Net Impact – \$4,058,200

Decrease Local Revenue – \$841,800

The Governor's proposed budget for FY16-17, on page A-40, recognizes a recurring decrease in state revenue to the General Fund in the amount of \$4,100,000.

SUMMARY OF AMENDMENT (013581): Deletes and replaces language of the original bill such that the only substantive change is to further decrease the minimum capital investment required to be made to \$100,000,000 to be considered a qualified data center. The minimum number of jobs required to be created over the investment period remains 15, as established by the original bill.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 67-6-102(44)(K), industrial machinery is defined to include any computer, computer network, computer software, or computer system, and any peripheral devices, when such items are used in the operation of a qualified data center.

- Pursuant to Tenn. Code Ann. § 67-6-206(a), industrial machinery is exempt from state and local sales and use taxes, except that, pursuant to Tenn. Code Ann. § 67-6-206(c), a 1.50 percent tax is imposed on electricity sold to or used by a qualified data center.
- Pursuant to Tenn. Code Ann. § 67-4-2009(3)(A), a tax credit equal to one percent of the purchase price of industrial machinery is allowed against franchise and excise (F&E) taxes. Such credit shall not exceed 50 percent of the combined F&E tax liability and any unused credit may be carried forward for up to 15 years.
- Based on information provided by the Department of Revenue, the total sales taxable base by current qualified data centers that is subject to the industrial machinery sales tax exemption for qualified data centers is estimated to be \$40,000,000.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent; the effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.

Assumptions related to Industrial Equipment Purchases by Newly Qualified Data Centers:

- Decreasing the minimum capital investments and the minimum number of jobs required to be considered a qualified data, as established by the bill as amended, is estimated to exempt from the sales tax approximately 60 percent, or \$24,000,000 ($\$40,000,000 \times 60.0\%$), worth of industrial machinery purchases by newly qualified data centers.
- The net recurring decrease in state sales tax collections is estimated to be \$1,619,234 [$(\$24,000,000 \times 7.0\%) - (\$24,000,000 \times 7.0\% \times 3.617\%)$]; the total recurring decrease in local sales tax collections, assuming that 50 percent of purchases exceed the single article cap, is estimated to be \$360,766 [$(\$24,000,000 \times 50.0\% \times 2.5\%) + (\$24,000,000 \times 7.0\% \times 3.617\%)$].
- The recurring decrease in state F&E tax collections is estimated to be \$120,000 ($\$24,000,000 \times 1.0\%$ tax credit $\times 50.0\%$ amount of tax credit used each year).

Assumptions related to Cooling Equipment and Infrastructure Purchases by Newly Qualified Data Centers:

- The cost of cooling equipment and backup power infrastructure that will now be exempt from the sales tax for newly qualified data centers is assumed to be approximately 50 percent of the cost of industrial machinery, or approximately \$12,000,000 worth ($\$24,000,000 \times 50.0\%$) of equipment.
- The net recurring decrease in state sales tax collections from such qualified data centers is estimated to be \$809,617 [$(\$12,000,000 \times 7.0\%) - (\$12,000,000 \times 7.0\% \times 3.617\%)$]; the total recurring decrease in local sales tax collections, assuming that 50 percent of purchases exceed the single article cap, is estimated to be \$180,383 [$(\$12,000,000 \times 50.0\% \times 2.5\%) + (\$12,000,000 \times 7.0\% \times 3.617\%)$].
- The recurring decrease in state F&E tax collections is estimated to be \$60,000 ($\$12,000,000 \times 1.0\%$ tax credit $\times 50.0\%$ amount of tax credit used each year).

Assumptions related to Cooling Equipment and Infrastructure Purchases by Currently Qualified Data Centers:

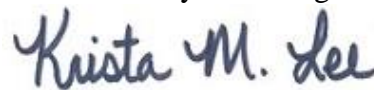
- The cost of cooling equipment and backup power infrastructure that will now be exempt from the sales tax for qualified data centers that meet the investment and job requirements under current law is assumed to be approximately 50 percent of the cost of industrial machinery, or approximately \$20,000,000 ($\$40,000,000 \times 50.0\%$).
- The net recurring decrease in state sales tax collections from such qualified data centers is estimated to be \$1,349,362 [$(\$20,000,000 \times 7.0\%) - (\$20,000,000 \times 7.0\% \times 3.617\%)$]; the total recurring decrease in local sales tax collections, assuming that 50 percent of purchases exceed the single article cap, is estimated to be \$300,638 [$(\$20,000,000 \times 50.0\% \times 2.5\%) + (\$20,000,000 \times 7.0\% \times 3.617\%)$].
- The recurring decrease in state F&E tax collections is estimated to be \$100,000 ($\$20,000,000 \times 1.0\%$ tax credit $\times 50.0\%$ amount of credit used each year).

Assumptions related to the Total Impact of the Proposed Legislation:

- The net recurring decrease in state revenue as a result of this bill is estimated to be \$4,058,213 ($\$1,619,234 + \$120,000 + \$809,617 + \$60,000 + \$1,349,362 + \$100,000$).
- The total recurring decrease in local revenue as a result of this bill is estimated to be \$841,787 ($\$360,766 + \$180,383 + \$300,638$).
- Any increase in state expenditures to accomplish the requirements of this bill will be not significant.
- The Governor's proposed budget for FY16-17, on page A-40, recognizes a recurring decrease in state revenue to the General Fund in the amount of \$4,100,000.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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